



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 30, 1996

Mr. David Thompson
Bracewell & Patterson, L.L.P.
500 N. Akard Street, Suite 4000
Dallas, Texas 75201-3387

OR96-0829

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38642.

The Arlington Independent School District (the "district"), which you represent, received two requests for information regarding sex offenders residing in the district who have registered pursuant to article 6252-13c.1, V.T.C.S., the "sex offender registration statute" (hereinafter, "the statute"). This information was provided to the district by local law enforcement authorities. You ask what portions of the information held by the district are public information and have submitted for our review a copy of the information responsive to the requests.

Under the statute, each sex offender with a "reportable conviction or adjudication"¹ is required by law to register with the appropriate "local law enforcement authority"² by either completing or verifying the contents of a Texas Department of Public Safety ("DPS") registration form.³ The local law enforcement authority must forward a copy of the completed registration form to DPS, where the information is entered into a computerized central database. *Id.* §§ 2(c), 5(a). Section 5(b) of the sex offender registration statute provides:

¹V.T.C.S., art. 6252-13c.1, § 1(5) (defining "reportable conviction or adjudication").

²*Id.*, § 1(2) (defining "local law enforcement authority").

³*See Id.*, § 2(b) (listing required contents of DPS form).

The information contained in the database is public information, with the exception of the person's photograph or any information:

- (1) regarding the person's social security number, driver's license number, numeric street address, or telephone number; or
- (2) that would identify the victim of the offense for which the person is subject to registration.

If the sex offender's victim was under 17 years of age at the time of the criminal conduct, the statute requires that the local law enforcement authority publish a notice in the local newspaper⁴ and notify the superintendent of the school district in which the sex offender intends to reside. The notice published in the local newspaper is required to include the following information *only*: the offender's age and gender, a brief description of the offense, and the municipality, street name, and zip code where the offender intends to reside. *Id.* § 3(f). However, the local law enforcement authority's notice to the school district superintendent must also include "any information the authority determines is necessary to protect the public," *except* the offender's social security number, driver's license number, telephone number, or "any information that would identify the victim." *Id.* § 3(g).

This office recently issued Open Records Decision No. 645 (1996) (copy enclosed) in which we ruled that school districts must release registrant information they receive from the local law enforcement authority unless it is specifically made confidential by either section 5(b)(1) or 5(b)(2) of the statute or, if section 5(b) is inapplicable,⁵ unless the information is confidential pursuant to other law or the district demonstrates that one or more of the Open Records Act's exceptions to required public disclosure apply. Open Records Decision No. 645 (1996) at 8. With this basic framework, we may address the specific records at issue.

The Grand Prairie Police Department has supplied the district with information relating to two registered sex offenders, including the offenders' numeric street addresses which are expressly confidential under section 5(b)(1) of the statute. You must withhold

⁴Such public notification is prohibited, however, where "the basis on which the person is subject to registration is . . . an adjudication of delinquent conduct or a deferred adjudication" or where the conviction is an offense under section 25.02 of the Penal Code (incest). *Id.*, § 3(e).

⁵Although Open Records Decision No. 645 (1996) also recognized that school districts may receive from the local law enforcement authority information which may not be governed by section 5(b), *see id.* at 8, the information submitted to this office for review does not appear to implicate these concerns. However, we are unable to determine whether any of the registrants is a student of the district. We note that to the extent that a school district receives juvenile sex offender information about one of the district's students, the information must be treated as a confidential "education record" under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g. *See generally* Open Records Decision No. 634 (1995).

this information under section 552.101 of the Government Code.⁶ We also note that the date of conviction of the second offender is listed as July 20, 1995. Prior to its amendment by the Seventy-fourth Legislature, article 6252-13c.1 provided that a person who releases information required for sex offender registration to any person other than a law enforcement officer commits a Class B misdemeanor. Act of May 26, 1991, 72d Leg., R.S., ch. 572, § 1, 1991 Tex. Gen. Laws 2029, 2030, *amended by* Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 6, 1995 Tex. Sess. Law Serv. 2197, 2201-02. When amending article 6252-13c.1, the Seventy-fourth Legislature made the following provision:

(a) Except as provided by Subsection (b) of this section, the change in law made by this Act to Article 6252-13c.1, Revised Statutes, applies only to a reportable conviction or adjudication as defined by Article 6252-13c.1, Revised Statutes, that occurs on or after the effective date of this Act or to an order of deferred adjudication for a person required to register under that article that is entered by the court on or after the effective date of this Act. A reportable conviction or adjudication that occurs before the effective date of this Act or an order of deferred adjudication that is entered before the effective date of this Act is covered by the law in effect when the conviction or adjudication occurred or the order was entered, and the former law is continued in effect for that purpose.

Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 16, 1995 Tex. Sess. Law Serv. 2197, 2205. The effective date for the amended statute is September 1, 1995. Because the second offender was convicted prior to September 1, 1995, release of this information is governed by the law in effect prior to September 1, 1995. Consequently, releasing the information to the requestors would constitute a Class B misdemeanor. Act of May 26, 1991, 72d Leg., R.S., ch. 572, § 1, 1991 Tex. Gen. Laws 2029, 2030 (amended 1995). The information relating to the second offender is therefore confidential and must be withheld in its entirety pursuant to section 552.101. With the exception of the numeric street address, all the information held by the district relating to the first offender must be released to the requestors.

With regard to the information provided the district by the Arlington Police Department, the information includes the offenders' numeric street addresses which, again, is expressly confidential under section 5(b)(1) of the statute and must be withheld under section 552.101 of the Government Code. We also note that the Arlington Police Department did not provide any information regarding the dates of convictions of these registrants. In Open Records Decision No. 645 (1996) at 9, this office addressed the concern that school districts might have about "unknowingly" committing a Class B misdemeanor by releasing information on registrants whose convictions occurred prior to September 1, 1995:

⁶Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Assuming that the local law enforcement agency will comply with the restrictions placed upon it by the statute, the school district need not be concerned as to the date of the conviction or adjudication.

Open Records Decision No. 645 (1996) at 9 (footnote deleted). We also noted that section 5A(b) of the sex offender registration statute provides that "[a]n individual, agency, entity, or authority is not liable under Chapter 101, Civil Practice and Remedies Code, or any other law for damages arising from" the release of public information by DPS, a penal institution, or a local law enforcement authority. *Id.* at 9, footnote 10. Therefore, we conclude that, with the exception of the numeric street addresses of the registrants, the district must release all the information provided by the Arlington Police Department.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 38642

Enclosures: Submitted documents
Open Records Decision No. 645 (1996)

cc: Kelly Patterson, Reporter
Arlington News
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(w/ Open Records Decision No. 645 (1996))

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(w/ Open Records Decision No. 645 (1996))